IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/04/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.14715 OF 1998
AND
W.M.P.NO.22303 OF 1998.

Nallappa Gounder ... Petitioner

-Vs-

1.State of Tamil Nadu,
rep.by its Secretary,
Urban and Housing Department,
Fort St.George,
Chennai-9.

2.The Special Tahsildar (L.A.),
Erode Urban Development Scheme,
Erode. ... Respondents

Writ petition filed under Article 226 of the Constitution of India
praying to issue the writ of Certiorari as stated therein.

For petitioner : Mr.M.M.Sundresh

For respondents : Mr.M.Mahalingam,
Government Advocate

:O R D E R
The above Writ Petition has been filed praying to issue a Writ of Certiorari calling for the records of the first respondent culminated in his proceeding under 4(1) Notification passed in G.O.Ms.No.25 Housing and Urban Development Department, dated 17.1.1997 and the Section 6 Declaration passed in G.O.Ms.No.34 Housing and Urban Development Department dated 4.3.1998 in so far as the petitioner's land situated in Survey No.726/3 with an extent of 3.38 Hectares in Kasipalayam village, Erode Division, Erode District and quash the same.

2. In the affidavit filed in support of the above writ petition, the petitioner would submit that he is the owner of the property situated in S.No.726/3 with an extent of 3.38 hectares in Kasipalayam village of Erode District, being his ancestral property and he also constructed a house in a portion part of the said land and also cultivating the remaining

extent by digging a bore-well; that the land consists of coconut trees, papaya trees, guava trees and while so, the first respondent issued a notification under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.25 Housing and Urban Development Department, dated 17.1.1997 for acquiring the lands of the petitioner along with certain other lands in the locality for the purpose of constructing houses by the Housing Board; that the second respondent called for an enquiry in and by his letter dated 5.3.1997 and he attended the enquiry and gave his detailed objection thereby stating that he had no other property except the land sought to be acquired and further requesting to exclude his land from the acquisition proceedings; that along with the objection petition, a letter from the Housing Society and a sketch showing that the release of his land would not affect the acquisition proceedings were also enclosed; that even the Housing Board had opined that his request can be considered after the completion of the scheme; that thereafter he sent another letter dated 29.4.1997 to the respondents, pursuant to which the Housing Board, by its letter dated 3.7.1997, directed him to produce a certificate to the effect that he is solely depending on the land and accordingly the Revenue Tahsildar had also issued a certificate dated 6.10.1997, which was communicated to the housing Board along with letter dated 25.10.1997, but, however, the same had not been considered favourably by the Housing Board.

3. The petitioner would further submit that the second respondent had conducted further enquiry pursuant to his notice dated 29.12.1997, for which a detailed reply was given by the petitioner on 21.1.1998, but the second respondent had passed the order under Section 5-A of the Act rejecting the objections of the petiti oner and the first respondent also without applying his mind, accepted the recommendations of the second respondent and passed the declaration under Section 6 of the Act in G.O.Ms.No.34 Housing and Urban Development Department, dated 4.3.1998. Therefore, the petitioner has come forward to file the above writ petition seeking the reliefs extracted supra.

4. No counter has been filed on behalf of the respondents. However, the learned Additional Government Pleader would argue on instructions. Therefore, the decision has to be taken by this Court in the above writ petition in consideration of the facts and circumstances of the case as projected by the writ petitioner, having regard to the materials placed on record and upon hearing the learned counsel for both.

5. During arguments, the learned counsel appearing on behalf of the petitioner, having traced the facts of the case as pleaded in the writ petition, would cite the following four judgments:

1. 1997(1) CTC 212 (C.PONNUSAMY AND 62 OTHERS VS. THE GOVERNMENT OF TAMIL NADU REP. BY THE COMMISSIONER AND SECRETARY, HOUSING AND URBAN DEVELOPMENT DEPARTMENT, FORT GEORGE, MADRAS-9 AND ANOTHER)

2. 1997 (II) CTC 323 (R.THIRUVENGADAM VS. THE SECRETARY TO GOVERNMENT, HOUSING DEPARTMENT, GOVERNMENT OF TAMIL NADU, MADRAS-9 AND 2 OTHERS)

3. 2000 (I) CTC 117 (RAMIAH MOOPANAR VS. STATE OF TAMIL NADU REP. BY THE

SECRETARY TO GOVERNMENT, ADI-DRAVIDAR AND TRIBAL WELFARE DEPARTMENT,MADRAS-9
AND ANOTHER)

4. 2001 (4) CTC 108 (V.KRISHNAN VS. GOVERNMENT OF TAMIL NADU REP. BY ITS SECRETARY, ADI DRAVIDAR AND TRIBAL WELFARE DEPARTMENT, FORT ST. GEORGE,MADRAS-9 AND 2 OTHERS)

6. So far as the first judgment cited above is concerned, the learned single Judge of this Court would cite an earlier order of this Court made in W.P.No.2813 of 1988 wherein while considering a case in which a land measuring 15 cents, wherein the petitioner therein had put up his constructions and living there for decades together, was sought to be acquired by the Government, this Court relying on a judgment of the Apex Court in STATE OF KARNATAKA AND OTHERS vs. NARASIMHAMURTHY AND OTHERS reported in (1995) 5 SCC 524 wherein the Honourable Apex Court remarking that 'Right to shelter is a fundamental right under Art.19(1) of the Constitution and to make the right meaningful to the poor, the State has to provide facilities and opportunity to build a house and acquisition of the land to provide house sites to the poor houseless is a public purpose as it is a constitutional duty of the State to provide house sites to the poor ....', has held:
"... it is neither purposeful nor it is meaningful nor it is just nor reasonable to deprive the portion of the 15 cents of the land, where the petitioner had put up constructions and been living there for decades together. The State while exercising powers of eminent domain under the Land Acquisition Act to provide accommodation or shelter should also see that the valuable houses, the petitioner or his ancestor had put up and where he has been living from his birth should not be pulled down or render the petitioner homeless and throw out his family to street...."

Relying on such an earlier decision of this Court rendered in W.P.No.2813 of 1988, the learned single Judge of this Court in the above cited case (1997(1) CTC 212) has held as follows:
"In acquisition of land, land owners purchasing small extent of land and putting up house construction and living therein for decades cannot be rendered homeless and the land owners can claim right to shelter which is fundamental right."

7. Citing the above judgment, the learned counsel for the petitioner would submit that since the right to shelter is a fundamental one and since the petitioner is living in the land sought to be acquired by constructing a house for quite a long time, the acquisition proceedings should be quashed.

8. It is noteworthy to mention that in the above judgment cited by the learned counsel for the petitioner and also in the earlier decided case of this Court in W.P.No.2813 of 1988, the petitioners are in occupation of small extent of lands measuring 5 to 15 cents constructing houses therein and considering the fact that if the said lands are acquired by the Government, it would definitely affect the petitioners, the learned single Judge of this Court and also the Honourable Apex Court had held in the manner

extracted supra.

9. But, in the case in hand, just contrarily, the extent of land owned by the petitioner is 3.38 hectares i.e. 8.35 acres, which is incomparable nor has any nexus with the judgment cited by the learned counsel for the petitioner, needless to mention that the above judgment cited by the petitioner's counsel is totally inapplicable to the situation wherein the Apex Court and this Court (in W.P.No.2813 of 1988) had held in the manner extracted supra, following which the learned single Judge of this Court in the judgment reported in 1997(I) CTC 212 might have ordered accordingly wherein the facts and circumstances would have gone well with that of the judgment of the Apex Court and in the case in hand it is quite contrarily placed. Therefore, the above judgment does not become in any manner applicable to the case in hand. Moreover, if at all the said acquisition is against the Constitutional mandate, the petitioner should have challenged the very Act under the relevant provisions of the Articles of the Constitution which is not in the case in hand.

10. So far as the second judgment cited by the learned counsel for the petitioner reported in 1997 (II) CTC 323 is concerned, in a case where the land owners objected for acquisition of the residential houses in 15 cents out of 1.83 acres and the requisitioning body overruled the objection, the learned single Judge of this Court while accepting the remarks of the requisitioning body coupled with the fact that Section 5-A enquiry is invalid for non-application of mind, has quashed the proceeding. But, in the case in hand, they are not the facts and circumstances since it is the total extent of more than 8 acres that is sought to be relieved in this case from the acquisition proceeding without pleading or establishing validly the mandatory violation of law. Therefore, this judgment cited by the learned counsel for the petitioner is not the answer for the pleading and the prayer of the case in hand.

11. In the third judgment cited by the learned counsel for the petitioner where the Section 4(1) Notification was said to have been published in Tamil Dailies "Kumari Murasu" and "Kinnas", which are not circulated in the locality where the petitioner resides or where the property situates, the learned single Judge of this Court had decided quashing the acquisition proceeding.

12. In the last judgment cited by the learned counsel for the petitioner reported in 2001(4)CTC 108 where the paper publication of Section 4(1) Notification was said to be published in "Madurai Mani" and "Guiness", though the Division Bench has held that the said publications were not proper

publications and that the publication must be in leading English and Tamil dailies which are in circulation in that locality, it has declined to quash the proceedings thereby remarking that

"we are refraining ourselves from setting aside the land acquisition proceedings, more so in view of the fact that award has already been passed.

While individual interest has to be taken into consideration, particularly in view of the right of guarantee envisaged under Article 300-A of the Constitution, it is well settled law that public interest shall always prevail over the individual interest."

13. Citing the above said judgments, the learned counsel for the petitioner would submit that there is no proper publication of the notification under Section 4(1) of the Act in the locality and hence the entire acquisition proceedings are liable only to be quashed.

14. So far as the case in hand is concerned, there is absolutely no iota of evidence produced on the part of the petitioner, who has come to the Court seeking redressal of his grievances, nor he established that proper local publication as indicated in the judgments cited third and fourth supra have not been effected in the case in hand. On the contrary, the learned counsel for the petitioner would seek the Government to establish proper local publication effected in leading English and Tamil dailies.

15. On verification, the learned Additional Government Pleader would prove that sufficient publication has been effected in the locality in the manner required by law and therefore these judgments also would not come to the rescue of the petitioner.

16. The other questions raised on the part of the petitioner pertaining to the time gap in between the Section 4(1) Notification and the award passed under Section 6 also shown to have been complied with in time from the date of last mode of publication of the Section 4(1) Notification and therefore it is a case wherein the petitioner has not succeeded, substantially proving his case on legal grounds, as a result of which the above writ petition becomes liable only to be dismissed.

In result, the above writ petition does not merit acceptance and the same is dismissed as such.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, W.M.P.NO.22303 of 1998 is also dismissed.

Index: Yes
Internet: Yes
Rao
To
1.The Secretary
to Government of Tamil Nadu,
Urban and Housing Department,
Fort St.George,
Chennai-9.

2.The Special Tahsildar (L.A.),
Erode Urban Development Scheme,

Erode.

V.KANAGARAJ, J.

Order in W.P.No.14175 of 1998
& W.M.P.NO.22303 of 1998.